ESCROW ADVISORY COMMITTEE MEETING

February 19, 2025
10:00 AM – 11:30 AM
300 S. Spring St., 15th floor conference room, Los Angeles, CA 90013
Or via. Microsoft Teams

Department of Financial Protection and Innovation Represented by:
KC Mohseni, Commissioner
Greg Young, Senior Deputy Commissioner
Myriam Valdez-Singh, Deputy Commissioner, Legislation
Sheila Oliver, Deputy Commissioner, Escrow and Mortgage Lending
Adrian Diaz, Deputy Commissioner, External Affairs
Sophia Smith, Deputy Commissioner, Administration
Paul Liang, Assistant Deputy Commissioner
Kelly Condon, Budget Manager

Committee Members:
Barry Sender, Village Escrow Services / Other Business Ownership
Heidi Cassel, Command Escrow, Inc. / Medium Sized Escrow Company
Jason Watrous, Freedom Escrow /Chairperson EAFC**
Juliana Tu, Viva Escrow! Inc. / Business Specialization
Matthew Davis, Esq., Davis & Davis Law Group, APC
Nancy Silberberg, Altus Escrow, Inc./Past Chairperson EIC*
Patricia J. (P.J.) Garcia, Beach Pacific Escrow, Inc./Chairperson EIC *
Pat Garcia, Beach Pacific Escrow, Inc. / Vice Chairperson EAFC **

* Escrow Institute of California
** Escrow Agents' Fidelity Corporation

1. Welcome and Opening Remarks

Liang greeted the advisory committee members, acknowledging those attending both in person and virtually. After conducting a roll call and confirming a quorum, Liang proceeded with the meeting.

2. Review and Approval of Minutes for 12/17/24 meeting

The advisory members received the minutes of the previous meeting in advance. Matthew Davis identified and corrected an error. Barry Sender moved to approve the minutes. Davis seconded the motion. The minutes were approved.

Liang announced the extension of recruitment for two vacant advisory positions, one for a CPA and another for a small business representative, until the end of March. He urged advisory members to help spread the word and encouraged interested individuals to submit their application. In response to PJ Garcia's inquiry, Liang confirmed that one application had been received for the small business position. Davis and other members raised concerns about the outdated definition of small businesses, noting that some applicants had either been declined or had not received a response. Sheila Oliver suggested that these applicants resubmit their applications. Oliver proposed a separate meeting to revisit the small business definition and members supported the idea.

3. Introduction & Meeting Overview

Commissioner KC Mohseni addressed the committee, introducing himself as the Acting Commissioner of DFPI following former Commissioner Hewlett's retirement since December 31, 2024. He was recently appointed to be the Commissioner of the DFPI. Prior to joining the DFPI, he served as a Chief Operating Officer in the State Controller's Office and a Deputy Director of Administration at the California Department of Housing and Community Development. He also served as a Project Director for the California Homeless Data Integration System at the Business, Consumer Services and Housing Agency and a Chief Fiscal Officer at the California Board of State and Community Corrections, where he oversaw the Implementation of the Financial Information System for California.

Commissioner Mohseni expressed appreciation for the committee's contributions and reaffirmed DFPI's commitment to consumer protection, oversight, and operational excellence. Commissioner Mohseni outlined the department's five strategic goals: strengthening financial services oversight, enhancing internal operations, expanding public outreach, supporting economic mobility, and promoting equity, diversity, and inclusion. Commissioner Mohseni and other DFPI staff provided their roles and responsibilities within the department, including oversight of licensing, administration, and budget management. Committee members introduced themselves, highlighting their affiliations with various escrow companies and industry organizations, as well as their experience and tenure on the committee.

Commissioner Mohseni outlined the meeting agenda, focusing on DFPI's fee study and the financial challenges facing the department. He stated that DFPI's Financial Protection Fund is projected to reach a negative balance by fiscal year 2025-26, prompting a comprehensive fiscal review. To address this, DFPI contracted Crowe LLP in March 2024 to conduct a cost allocation analysis and recommend a path toward fiscal sustainability. The study's findings and potential fee adjustments were to be discussed in detail during the meeting.

Greg Young provided an overview of DFPI's financial structure, explaining that the department is funded through fees and assessments rather than the state's General Fund. He noted that operational costs have risen due to increased regulatory responsibilities, including oversight of new financial laws such as the California Consumer Financial Protection Law (2021), the Debt Collectors Licensing Act (2022), and the Digital Financial Assets Law (2023). These mandates have expanded DFPI's scope while fees have remained largely unchanged for decades. During this time, staff positions across the department increased by 21.7 percent. The DFPI's 2024-25 budget is $177 million, reflecting 3 percent increase over three years. The department's expenditures have outpaced revenues since fiscal year 2021-22, leading to a decline in fund balance. Major drivers include salary adjustments, static fee structures, startup costs for new programs, and decreased banking revenues due to closures, such as Silicon Valley bank and first Republic bank.

Young stated the department's revenue sources come from program assessments, referred to as the annual license fee in statue, based on business size, volume, or other factors, which cover administrative costs; program fees for applications registrations, licenses, and renewals; and program examination fees, for regular audits or examinations. The last escrow assessment increase was in 2005. The last escrow application fee increase was in 1982. And the last escrow examination fee increase was in 2017. Young emphasized that many department fees are set in statute and have not been adjusted since the 1970s, failing to reflect modern costs.

The study found that the escrow program requires an additional $11.2 million in revenue to sustain operations through fiscal year 2027-28. To address this, an increase to the maximum annual assessment from $2,800 to $7,215 is required. Additionally, the examination fee, which had remained at $95 per hour since 2017, increased to $120 per hour as of January 2025. The new rate starts on or after January 2, 2025. Companies with examinations starting after January 2, 2025, should budget accordingly for the new rate. Examinations starting before January 2, 2025, will continue to be billed at the old rate of $95 per hour even if additional hours occurred after the increase. This adjustment was announced in DFPI's December 2024 bulletin.

4. Committee Member Q & A

Commissioner Mohseni reiterated the need to focus on pre-submitted questions.

1) Liang read the first question: The trailer bill language allows the DFPI to add a deficit actually incurred during the prior two fiscal years to the annual assessment up to $7,215, what are the actual deficits in the past two years?

   Oliver provided a response that in 2022-23, the escrow program deficit was $1.4 million. In 2023-24, the escrow program deficit was $2.5 million with the increased deficit driven by increased personnel costs from collective bargaining agreements. The department provides a copy of escrow program's budget upon request.

   Davis raised concerns regarding the longstanding issue of obtaining a copy of the escrow budget, citing unfulfilled promises over the years. He pointed out that despite assurances from the DFPI earlier in the year, the budget had not been provided, yet the department is now requesting additional funds. Davis argued that this lack of transparency made any fee increase seem unjustified. He emphasized that the escrow unit is supposed to be self-sustaining, yet there is no clear understanding of its revenues and expenditures. He also recounted his efforts since August to obtain details on examination fees, only to be told he needed to submit a Public Records Act request.

   Oliver responded by stating that the department had provided the 2022-23 escrow budget on June 18, 2024. Davis countered that the provided document was insufficient, as it contained only a few summary lines without any meaningful breakdown or explanation. PJ Garcia added that the last comprehensive budget summary she could recall was from 2018. Nancy Silberberg referenced a document she had on hand, which indicated a deficit of $876,000. When asked for clarification, she confirmed that the document lacked a specific date but reflected financial concerns. Sophia Smith clarified that the deficit included department costs allocated to DFPI, alongside additional statewide expenses such as the statewide pro-rata share, supplemental pension payments, and other agency costs. She noted that these figures contributed to the reported $1.4 million deficit for 2022-23 and the projected $2.5 million deficit for 2023-24.

Davis emphasized the necessity of a detailed breakdown of revenue sources, including assessments and examination fees. He also pointed out that recent salary increases due to collective bargaining agreements needed to be explicitly outlined. Commissioner Mohseni directed advisory members to the fee study available on the department's website for additional information about the background of the fee study.

2) Liang read the second question: will the department levy a special assessment for the 2025-26 fiscal year.

   Young provided a response that the assessment increase to $7,215 is intended to cover program costs without the need to levy a special assessment.

3) Liang read the third question: the department recently raised the exam rate from $95 to $120 per hour, if the new annual assessment results in a surplus, will the department reduce its exam rate?

   Oliver provided a response that the hourly exam rate is intended to cover the hourly personnel and associated costs of conducting an exam. While the department has not had a surplus in the escrow program, if there is a surplus in the program, it would be credited on a prorata basis via the assessment process.

   PJ Garcia sought clarification on whether the proposed escrow license fee increases were solely for the escrow program, as the fee study summary included multiple programs. Oliver confirmed that the increase applied specifically to the escrow program. PJ Garcia, recalling past fee adjustments, expressed surprise at the magnitude of the proposed increase and questioned whether prior fee adjustments had not adequately accounted for anticipated cost increases. Pat Garcia inquired about the source of the pre-submitted questions. Liang explained that the questions submitted by contributors chose to remain anonymous. Pat Garcia acknowledged the response but expressed a preference for transparency regarding the origin of the questions.

4) Liang read the fourth question: what can the department do to lower regulatory costs for small businesses? Can the department conduct efficient examinations and licensing reviews thereby lowering the cost of examinations and licensing for escrow companies?

   Young provided a response that emphasized the escrow program's efforts to improve examination efficiency, aligning with DFPI's strategic priority of operational excellence. He highlighted initiatives such as enhancing data analytics and technology for better insights, improving transparency through regulatory communications, and facilitating knowledge-sharing to enhance policies and practices. Since the pandemic, the escrow exam teams have worked with licensees to conduct remote exams, reducing travel costs. Additionally, the program developed risk models to perform risk-based examinations, and the department continues to seek ways to increase efficiency and reduce costs.

Davis raised concerns about the department's examination process, noting that risk-based examinations for newer companies had become less frequent. He suggested that the department consider streamlining the process to make it more economical and efficient, as examination times were often lengthy, and invoices were sometimes delayed. He emphasized that addressing these financial concerns would benefit both licensees and the department. Liang responded by encouraging licensees to complete post-examination surveys to provide feedback. He explained that the department collects and reviews these surveys, which serve as a proper channel for licensees to communicate concerns about examinations, billing, and potential violations. Oliver added that she personally follows up with licensees to understand their experiences and improve processes.

Pat Garcia inquired about the timeline of these surveys, expressing surprise at only recently encountering one. Heidi Cassel noted that surveys include an option for licensees to request a follow-up. Sender questioned the efficiency of the current four-year statutory audit cycle, stating that audits should be conducted based on risk rather than at fixed intervals. He pointed out that prolonged audit timelines were burdensome for businesses and suggested a merit-based approach, where bad actors could be audited more frequently while compliant businesses might have fewer audits. Oliver confirmed that the department was implementing risk-based prioritization within statutory constraints. Myriam Valdez-Singh clarified that changing the four-year cycle would require legislative action. Sender then asked if the department would support such a legislative change. Valdez-Singh explained that while the department does not take positions on legislation, it analyzes bills and collaborates closely with stakeholders.

5) Liang read the fifth question: will the department consider removing the 4-year exam cycle to conduct on demand examinations to eliminate exam backlogs? Currently there are exams taking too long to complete.

   Valdez-Singh provided a response that the DFPI is focused on eliminating exam backlogs. The 4-year exam cycle is a statutory requirement and is therefore up to the legislature to change.

   PJ Garcia noted that the Escrow Institute Board was considering a bill to offset rising licensing fees, which could include examination-related cost savings. Valdez-Singh expressed willingness to discuss potential legislative language. Silberberg emphasized the importance of avoiding adversarial positions and appreciated the opportunity for collaboration. Liang acknowledged concerns about examination timelines but clarified that complex cases, such as those involving lapping schemes or multi-branch operations, naturally take longer.

Davis reiterated concerns about gaps in the examination process, where initial document requests were met promptly by licensees, but significant delays followed before examiners resumed work. He highlighted those prolonged open examinations, sometimes lasting 18 months, hindered businesses from expanding or obtaining additional licenses. He urged the department to review its procedures to minimize these delays and their impact on business operations. Davis explained that financials are submitted during change-of-ownership applications, making it unnecessary for field examiners to delay licensing approvals. Since licensing examiners also review annual budgets, they are capable of assessing financial concerns without requiring input from field examiners. Liang noted that financial deficiencies identified in field exams must be resolved before approving branch licenses, as issuing additional licenses to non-compliant companies poses risks. Silberberg suggested providing estimated processing times based on company size to help licensees manage expectations. Liang responded that improvements to the website are in progress to provide more transparency on licensing timelines. Cassel acknowledged past improvements in the licensing process and thanked the team for their efforts. Davis added that while processing has improved, some gaps remain but are being addressed.

Sender raised concerns about inactive or "parked" licenses, estimating over 100 to 150 could be surrendered due to new fee increases. He questioned whether this potential revenue loss had been accounted for in the budget projections. Greg Young confirmed that the fee study focused on the current environment and did not factor in potential surrender trends. Oliver and Liang emphasized that retaining or surrendering licenses is a business decision, and no significant trend of surrenders has been observed yet.

Juliana Tu and Cassel suggested considering installment payments for the increased fees to ease the financial burden on businesses, particularly given the high costs of audits and assessments. Young confirmed that installment payments are an option for licensees who need flexibility. PJ Garcia added that the escrow industry is aging, with many owners retiring, which could further impact license retention. She cautioned against a potential cycle of licensee attrition similar to what occurred in the early 1990s. Davis noted historical challenges, referencing litigation against the department in response to past financial pressures on the industry. He emphasized the need for careful financial planning and consideration of potential unintended consequences as fees increase.

PJ Garcia inquired about the projections for the financial outlook of the program over the next several years. Young confirmed that the study covered projections through the fiscal year 2027-28. Oliver affirmed this timeline. Liang then opened the floor for public comments.

Pat Garcia raised concern regarding a recent special assessment payment sent via ACH under new instructions. He noted the lack of confirmation or receipt of payment, making it unclear whether the department had received the funds. Liang explained that if no reminder letter was received from the department, the payment would have been successfully processed. However, he acknowledged the need to check with accounting about issuing payment confirmations. Pat Garcia and Silberberg emphasized the industry's need for an official acknowledgment of payments. Cassel suggested that bank records could serve as proof, but Pat Garcia noted that, as a first-time user of ACH, he was uncertain whether all details were correctly processed. Liang mentioned that an electronic system, such as NMLS, could offer a more transparent tracking mechanism for such transactions.

Davis pointed out that the industry had historically operated with heavy paperwork due to regulatory requirements. He proposed that the advisory group assist in streamlining processes related to NMLS adoption. Paul Liang agreed that increased efficiency would benefit both the department and licensees but stated that this discussion should be continued separately.

Silberberg sought clarification regarding the escrow program's funding classification in the fee study. She noted that the report grouped escrow with financial protection funds, even though the program is self-funded, similar to credit unions. Valdez-Singh reassured her that escrow program revenues remain within the program and are not pooled with other funds. Silberberg also asked how licensees would be informed about fee assessments and potential adjustments. Liang responded that any analysis of fee surpluses or adjustments would likely be communicated through a department bulletin.

PJ Garcia pointed out that the current law sets a maximum cap but does not require the department to charge the full amount. Young reiterated that the fee study was designed to ensure that revenue covers program costs rather than generating a surplus. Despite this, PJ Garcia and others emphasized the need for transparency in fee calculations so that licensees could better understand and justify the assessments.

Sender expressing gratitude for the department's efforts put into improving the program, though acknowledging the difficulty in understanding certain aspects of it. He emphasized that while the committee might not have the power to demand changes, they should focus on advancing the program for the benefit of constituents. Sender highlighted that the committee should continue to contribute meaningfully to improving the program, particularly by embracing new technological advancements like AI, and by encouraging professional designations and more effective computer systems. He urged the committee to move forward and to focus on tangible improvements.

PJ Garcia followed up on Sender's points, agreeing that valuable work has come out of the committee but raised concerns about the increasing difficulty of getting agenda items added. PJ Garcia also brought up an issue about Public Records Act requests, noting that they were required to obtain certain data for discussions. She questioned why this was necessary if the committee's role is to advise the Commissioner, and whether the process for requesting data could be clarified.

Oliver explained that some requests for data had been delayed, such as those concerning examinations and licensing status, especially during the period of conservatorship. She clarified that if data related to budgets and funding was needed, it would need to be requested through the PRA, as the program did not have complete or up-to-date control over that information. PJ Garcia suggested that it would be helpful for the agenda to include a reminder about how to submit PRA requests, so committee members could stay aware of the necessary procedures when seeking data for meetings. Oliver clarified that such reminders were unnecessary, as the link for the PRA request process is available online. Oliver reiterated the importance of submitting PRA requests ahead of time to avoid delays, offering that these requests should be made before the next meeting to allow the department adequate time to respond. PJ Garcia mentioned that a recent request she had made concerning parked licenses was handled quickly, indicating that the process could work efficiently if the procedures were followed.

Tu expressed frustration over referral practices. She mentioned that her community had been asking for help with tackling violations for years, but they had not received any substantial responses. She was concerned that with the recent increase in fees, constituents would question the lack of progress on resolving violations. Tu urged that something be done to demonstrate that the department was addressing these issues. Oliver acknowledged the concern, explaining that the department is actively investigating referral violations. She reassured Tu that efforts were ongoing, though she was unable to share further details due to the sensitive nature of the matter.

Davis stated that the department's lack of visible action on referral violations was contributing to a perception of inaction, which was causing difficulties for escrow agents. He stressed that agents were being pressured to offer something in exchange for their services because there was no clear message from the department about the legality of such requests. He suggested that the committee advocate for enforcement to demonstrate a stronger commitment to upholding laws. Oliver agreed, mentioning that a bulletin could be helpful to communicate the department’s intentions regarding enforcement.

5. Public Comments

Rose Pothier voiced concerns about the inefficiencies caused by the current four-year exam cycle, especially for businesses with low risk. She believes a more flexible, risk-based approach would benefit both the department and business owners.

6. Closing Remarks

Liang thanked everyone for their attendance and participation. The next quarterly advisory meeting was tentatively scheduled for June 10, 2025 at 10 a.m. At 11:51 a.m., Liang adjourned the meeting.